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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 449

SHELL OIL COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI

REPLY OF SHELL OIL COMPANY TO BRIEF OF FEDERAL POWER COMMISSION

*WILLIAM F. KENNEY,
OLIVER L. STONE,
50 West 50th Street,
New York 20, New York.

R. H. WHILDEN,
Shell Building,
Houston, Texas.

DAVID T. SEARLS,
VINSON, ELKINS, WELMS & SEARLS,
Esperson Building,
Houston, Texas.
Attorneys for Petitioner.

*Attorney upon whom service is to be made

SORG PRINTING COMPANY OF TEXAS, HOUSTON, TEXAS

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The Commission's brief completely dodges the principal issue in this case. The Commission tries to cast into the background our primary contention that the sales involved here are not sales "in" interstate commerce and hence not within the affirmative coverage of the Act. The Commission tries to replace this primary contention with our completely secondary position that these sales are within the production and gathering exemption of the Act.

In thus attempting to choose a battleground of its own liking, the Commission concedes the strength of the forces amassed against it in the principal arena.

Our primary contention, as clearly stated in Paragraphs 3 and 11 of our Petition, is that the sales here involved are not within the affirmative coverage of the Act because they are not sales "in" interstate commerce. Only secondarily do we urge the sales to be within the production and gathering exemption.

It was the same before the Commission and before the Court of Appeals. In the *Deep South* case (Page 50 of the Petition), the Court stated the matter as follows:

> "The first and principal point urged is that the sales made by it are not within the specific affirmative grant of jurisdiction to the Commission over sales 'in' interstate commerce, for the reason that all of the relevant circumstances establish that they are 'local' in character."

In the *Shell Oil* case (Page 20 of Petition), the Court of Appeals said:

> "In this review proceeding, the basic contentions and the grounds asserted for setting aside the Commission's order are in essence identical to those urged by petitioner in the *Deep South* case . . . "

The Commission quotes at length from *Interstate Natural Gas Company* v. *Federal Power Commission*, 331 U. S. 681, as disposing of our contention that the sales are not in interstate commerce. In attempting to make the *Interstate* doctrine applicable here, the Commission attempts to treat the gathering and processing which intervene between Shell's sales and the subsequent sales into interstate commerce as being in the same category as the compression which the gas underwent in the *Interstate* case upon delivery to the purchasers. The Court is no doubt sufficiently familiar with the facts in that case not to be led into any

such erroneous analogy. There this Court, in connection with its finding that the movement of the gas "is a continuous process without interruption for storage, processing or for any other purpose", said in footnote 7:

> "Gas in the Monroe field is 'dry' gas and consequently is not subjected to any extraction processing."

This Court concluded that "by the time the sales (by Interstate) are consummated, nothing further in the gathering process remains to be done. We have held that these sales are in interstate commerce." The *these sales* referred to are sales made after the completion of gathering, thus indicating that sales made prior to gathering are not in interstate commerce. The Court also found that:

> "Long before the gas reaches the compressor pumps it has been committed to its interstate journey without interruption or deviation. Under such circumstances, the increase of pressure in the compressor stations must be regarded as merely an incident in the interstate commerce rather than as its origin."

When the *Interstate* case is considered in the light of this Court's decision seven years later in *Michigan-Wisconsin Pipe Line Company* v. *Calvert*, 347 U. S. 157, the true distinction becomes apparent. In the *Calvert* case, this Court had before it the essential factor which was missing in the *Interstate* case, namely, *processing*, followed by gathering. In *Calvert*, this Court reasoned that interstate commerce did not begin and the gas did not have its "taking off" into interstate commerce "until gathering and processing had ceased." When these two decisions are considered in the light of their respective facts, they establish the principle that when gas is gathered and undergoes processing before the residue gas enters the pipeline which is to take it out

of the State, this last occurrence marks the origin of interstate commerce. Sales consummated by delivery prior to that point, such as Shell's sales involved in this case, are sales in *intrastate* commerce and hence are not within the jurisdictional scope of the Act.

For the reasons herein and in the petition, Shell Oil Company prays that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

WILLIAM F. KENNEY,
OLIVER L. STONE,
50 West 50th Street,
New York 20, New York.

R. H. WHILDEN,
Shell Building,
Houston, Texas.

DAVID T. SEARLS,
VINSON, ELKINS, WEEMS & SEARLS,
Esperson Building,
Houston, Texas.
Attorneys for Petitioner.

By .....

Houston, Texas, October 23, 1957.

I certify that the foregoing Reply of Shell Oil Company to Brief of Federal Power Commission was served upon Respondent, the Federal Power Commission, by mailing a copy thereof, postage prepaid, to each of the following attorneys for Respondent on the 23rd day of October, 1957:

J. LEE RANKIN, *Solicitor General*
Department of Justice
Washington 25, D. C.

WILLARD W. GATCHELL, *General Counsel*
ROBERT L. RUSSELL, *Attorney*
WILLIAM L. ELLIS, *Attorney*
Federal Power Commission
441 G Street, N. W.
Washington 25, D. C.

DAVID T. SEARLS
Attorney for Petitioner

Houston, Texas
October 23, 1957